

Changes in the Criminal Legal Discourse on Men's Violence against Women in Heterosexual Relationships

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1 Introduction

Men's physical and psychological violence against women in heterosexual relationships has been the subject of several legislative investigations and changes in Swedish criminal law over the last 50 years. This form of violence has mutated from being a private issue into which the state should not intervene, into an issue open to state intervention, not least from the criminal justice system. At present, men's violence against women in heterosexual relationships is regarded politically as an important aspect of women's human rights and a central issue of gender equality and criminal justice. Such violence also constitutes a crime more and more frequently dealt with in the criminal justice system.¹ Since the 1990s, men's violence against women in heterosexual relationships has been a prioritized crime and several measures have been undertaken to improve the way in which the criminal justice system deals with the violence, such as action plans, organizational changes, further education and evaluation of working-methods in order to reduce attrition rates.²

However, it is not only legislation and legal practices that have changed. The way, in which men's violence against women in heterosexual relationships is constructed in criminal legal discourse, i.e. how it is spoken about and constructed by discourses in a criminal legislative context, has also changed rather dramatically. There has been a long tradition of constructing men's violence against women as a problematic kind of violence, as "different" or "strange" and, therefore, not suitable for inclusion in the criminal legal system. Today, and especially after the Women's Peace Reform in 1998, difficulties in dealing with such violence within the criminal law are also connected with the criminal legal system itself. This means that the construction of criminal law in legislative processes has also changed, from being constructed as a rather static, immutable and unchallenged phenomenon into something that is open to scrutiny regarding, for example, what values are imbedded in criminal law theory and practice and the system's inability to deal with difference related, for example, to gender.

In this essay I will illuminate and analyze discursive changes in Swedish criminal legislative processes about men's physical and psychological violence against women in heterosexual relationships. The text material for analysis comprises preparatory works, mainly reports from inquiries (law committees) or memoranda from the ministry of justice, government bills and reports from the Parliamentary Standing Committee on Justice. These texts are those that are

1 One example from crime statistics giving a strong indication that this is the case, is that police reports on assaults against women, according to the Swedish National Council of Crime Prevention, have increased by 150 % since 1982 and by 31 % since the beginning of 2000, *Brottsutvecklingen i Sverige fram till år 2007*. Rapport 2008:23, p. 120.

2 See e.g. the government's *Action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relations*, Skr. 2007/08:39 and The Swedish National Council of Crime Prevention, *Polisens utredningar av våld mot kvinnor i nära relationer*, Rapport 2008:25. In 2008 the National Police Board has produced a national manual on working methods for police officers investigating crimes in intimate relationships.

most important in Sweden and represent opinions and arguments presented by the central actors in the legislative process. The inquiries are appointed by the government and examine and report in accordance with terms of reference laid down by the government (government directives). After each inquiry has presented its report (or a memorandum has been produced at the Ministry of Justice), there is a consultation process in which various bodies, governmental and non-governmental, central and local, have the opportunity to comment on the inquiry's report (or the memorandum). When the consultation process is completed, the Ministry of Justice drafts the bill and submits it to the Council on Legislation, the members of which are judges drawn from the Supreme Court and the Administrative Supreme Court. This consultation is intended to ensure conformity with the legal system and compatibility with constitutional law. Before the bill is finally submitted to the parliament, it is dealt with by one of the parliamentary standing committees, which in the case of criminal legislative processes is the Parliamentary Standing Committee on Justice.

All the texts are related to three criminal law reforms: the Penal Code Reform in the mid 1960s, the 1982 reform of prosecution for assault and the Women's Peace Reform in 1998. Discourses on *if and how to use criminal law* are heavily predominant in the texts. "Use of criminal law" here comprises criminalization and regulations concerning prosecution which lead a prosecutor, or might lead a prosecutor, not to prosecute – even though it is obvious that a crime has been committed. The discourses are of two kinds, either promoting a *use* of criminal law or a *limited use* of criminal law.

My starting-point is that it matters how we talk about and conceptualize men's violence against women. According to discourse theory there is a relationship between language and power which shapes our knowledge and affects what is possible and what is not. There is a discursive struggle going on in texts about the power to define "the truth" and thus to decide what is possible and what should be done.³ Taking a social constructionist and discourse theoretical position means that concepts, objects and subjects are not taken for granted or as pre-constructed "facts", but are instead seen as constructed in discourses and thus open for change.⁴

I am interested in the productive power of criminal legal discourse, i.e. how it produces a particular picture of men's violence against women in heterosexual relationships. I have used a discourse analytical method inspired by Foucault's concept of discursive power and Fairclough's model of critical discourse analysis.⁵ Critical discourse analysis of legal texts does not contribute directly to legal interpretation, but can provide grounds for reconsidering accepted interpretations by assuming a critical attitude towards them and revealing how cultural and social values are reflected in legal concepts and argumentations

3 Burr, V., *Social Constructionism*. London: Routledge 2003, p. 46-67.

4 Niemi-Kiesiläinen, J., Honkatukia, P., Ruuskanen, M., *Legal Texts as Discourses*, in Gunnarsson, Å. et.al. (eds.), 'Exploiting the Limits of Law. Swedish Feminism and the Challenge to Pessimism'. Aldershot: Ashgate 2007, p. 69-87.

5 Fairclough, N., *Discourse and Social Change*. Cambridge: Polity Press 1992; Fairclough, N., *Language and Power*. Harlow: Longman 2001 (2nd edition).

about law. Furthermore, by asking which discourses become dominant and which are silenced, power relations and the consequences of dominant discourses within the criminal justice system can be studied.⁶ In my analysis I read texts dealing with issues on the use of criminal law and asked *what* is said and *how* it is said. I read the texts in order to discover themes and patterns of themes—discourses—that appear in them.

One interesting question is, of course, how and to what extent discursive changes in the legislative context influences legal practice, both in respect of discourse and of legal outcome. Research indicates that the picture is complex, with maintenance of the status quo and simultaneously some observable significant signs of change, but this issue is not dealt with here.⁷

The essay is largely based on my book *Straffrätt och mäns våld mot kvinnor – om straffrättens förmåga att producera jämställdhet* (Criminal Law and Men's Violence against Women – The Ability of Criminal Law to Produce Gender Equality). I start by presenting a short historical background to the Penal Code Reform. For following reforms, I sketch out the legal and political terrain in order to provide a background and context for the legislative processes that are analyzed. Thereafter I present the discourses in the texts. Finally I analyze constructions of the violence in these discourses and how the discussion about using the criminal law concerning men's violence against women in heterosexual relationships has changed. My main point is that criminal legal discourse has moved towards a more reflective and reconstructive legislative process with regard to men's violence against women in heterosexual relationships.

2 Historical Background

In medieval law, and in accordance with the patriarchal view of the family at that time, married men's violence against their wives was legitimized within certain limits in that it was a right and a duty for a husband to chastise his wife. A view of the violence as a public issue predominated. The State and the Church did not hesitate to use the possibilities offered by Marriage Law and Church Law to intervene in cases of excessive violence. The purpose of these interventions was to uphold order in the household and rehabilitate the marriage. Men, who exceeded their rights, especially if they did so frequently, were often deemed tyrannical and regarded as failures as men. The husband was without doubt the head of the household, but he had to keep a balance between being too rigorous and too indulgent. Men were expected to uphold order in the household without violence and women were supposed to respect the master's voice and subordinate themselves. Even though there were interventions, they did not

6 Niemi-Kiesiläinen, J. et.al., op.cit.

7 Some aspects of the discursive relationship between The Women's Peace Reform and legal practice are analyzed in Burman, M., *The Ability of Criminal Law to Produce Gender Equality – Judicial Discourses in the Swedish Criminal Legal System* (forthcoming 2009, in the journal *Violence Against Women*).

necessary mean that the wife was protected and she was quite often blamed as the violence was seen to be due to her behaviour.⁸

A process of change started during the 18th century. The right to chastise a wife was gradually weakened in legislation at the same time as this form of violence faded as an official legal and social issue. Marital violence became a private issue and there was less public discussion about such violence.⁹ All forms of physical violence against wives were criminalized in the 1864 Criminal Code and regulations governing prosecution for assault and unlawful threat were introduced. Non-aggravated forms of assault taking place in non-public places, for example the home, became crimes, prosecution of which required that the victim reported the crime to the police. The same prosecution rule was applicable to unlawful threat with weapons.¹⁰ Other forms of threats in non-public places were regulated as complainant crimes, i.e. the complainant herself had to prosecute the offender and the police were prohibited from investigating the crime.¹¹

The prosecution rules introduced in 1864 were in line with a new ideological view of the family as a private sphere that ought to be free from interventions, especially on the part of the state. The husband's standing as master of the household was replaced by a male bourgeoisie respectability, an understanding of masculinity in relation to which it was not desirable, suitable or relevant to talk about violence in the family.¹² Criminal legal scholars and the Law Committee preparing the Criminal Code expressed the view that intervention against violence in the family normally causes more harm than good and that some crimes were associated with such "delicate" circumstances that they should not be made public unless the victim, by making a complaint, officially declared their wish to "go public".¹³ The 1864 Criminal Code thus implemented

8 For historical analysis of men's violence against wives in Sweden during the period from the Middle Ages to the 19th century See e.g. Lennartsson, M., *Ulf Knutzon: Hustruplågare, hemfridsbrytare och horkarl. En adelsman i 1600-talets Småland*, Sveriges Släktforskarförbunds årsbok 1993; Lindstedt Cronberg, M., *I husbondemaktens tid. Hustrumisshandel i 1800-talets Sverige*, in Österberg, E. et.al. (eds.), *Våldets mening. Makt, minne, myt*, Lund: Nordic Academic Press 2005; Lindström, D., *Oärliga mästare och kivande makar. Ett och annat om rättskipning, kriminalitet och normsystem i 1500-talets Norden*, Historisk Tidskrift 4, 1994; Sundin, J., *För Gud, Staten och Folket. Brott och rättskipning i Sverige 1600 – 1840*, Skrifter utgivna av Institutet för rättshistorisk forskning, Serie 1, fyrtiosjunde bandet, Lund 1992; Östman, A.C., *Oenighet och äkta kärlek. Behandling av "äktenskapliga tråtor" i ett agrarsamhälle på 1700-talet*, in Lövcrona, I. (ed.), 'Mord, misshandel och sexuella övergrepp. Historiska och kulturella perspektiv på kön och våld', Lund: Nordic Academic Press 2001.

9 Liliequist, J., *Mannens våld och välde inom äktenskapet. En studie av kulturella stereotyper från reformationstiden till 1800-talets början*, in Lövcrona, I. (ed.), 'Mord, misshandel och sexuella övergrepp. Historiska och kulturella perspektiv på kön och våld', Lund: Nordic Academic Press 2001, p. 88-123.

10 14:45 Criminal Code 1864.

11 15:24 Criminal Code 1864.

12 Liliequist, J. op.cit.

13 Schlyter, C.J., *Juridiska Afhandlingar*, Första häftet, 1836, p. 174 and The Law Committee, as quoted in SOU 1940:20, p. 37.

a clear divide between the public and private sphere. This divide has been problematized as one of the most important aspects in understanding women's subordinate position in family, state and society, which still to some extent influences the conception of certain private areas as beyond the reach of legislation and the conception of violence within the family as something different from violence in the public sphere.¹⁴

In 1943 the prosecution rule concerning assault was supplemented with the possibility of prosecuting without a complaint from the victim, if the chief prosecutor judged that it was in the public interest to prosecute. It was still considered important to respect the private sphere, but there was also an awareness of the need to intervene against male violence in the family. The "public interest" prerequisite and placing the decision of the level of chief prosecutors were regarded as guarantees against "unsuitable" interventions.¹⁵

3 The Penal Code Reform

3.1 Legal and Political Context

During the 1940s – 1960s, men's violence against their wives as a public political issue was seen as a matter of criminal law together with a strong conception that violence was "normal". Violence, according to Wendt Höjer, was to a large extent understood as a natural part of cohabitation between men and women, as a natural consequence of family rows. The discussion about the need for greater legal protection for women did not concern such "normal" violence. Instead it was the serious violence that was formulated as a problem in need of intervention. Intervention against such violence was legitimized with reference to a vital social interest in protecting children from a violent family life and securing moral order in the home.¹⁶

The enactment of the new Penal Code in the mid 1960s did not lead to any changes to the prosecution rule for assault. A proposal from the Criminal Law Commission to change the prosecution rule was met with resistance. The main arguments put forward were a need to respect privacy, a wish not to destroy the marriage by intervening and a fear that the work-load for the police and the judiciary would become too heavy if a general duty to investigate and prosecute "frequent types of crimes" was introduced.¹⁷ At the same time, however, with reference to a need to protect wives from their husbands, there was a thorough reform of the crime of unlawful threat and the prosecution rules for that crime,

14 See e.g. Svensson, E-M., *Genus och rätt. En problematisering av föreställningen om rätten*, Uppsala: IUSTUS 1997 and Pohjonen, S., *Kvinnor, våld och straffrätt*, in Nordborg, G. (ed.), '13 kvinnoperspektiv på rätten', Uppsala: IUSTUS 1995.

15 Prop. 1943:81, p. 9-10 (Government Bill).

16 Wendt Höjer, M., *Rädslans politik. Våld och sexualitet i den svenska demokratin*, Malmö: Liber 2002, p. 52-88.

17 Prop. 1962:10, C 133-140, C 151 and C 177-178.

carried through with almost no resistance or discussion.¹⁸ The criminalization of unlawful threat was extended and made into a public prosecution crime that did not require a complaint from the victim or a prosecutor's decision based on "public interests".¹⁹

3.2 Discourses

There are three major discourses in the texts from the 1960s reform: *protection of privacy*, *efficiency* and *difference*. These included a *limited use* of criminal law as rather self-evident and the various actors in the legislative process expressed more or less identical views on the issues.

In the discourse on *protection of privacy* arguments about *the victim's will* to avoid intervention in the family and a social interest in *maintaining the marriage* were central. A general point of departure was to avoid making the victim's private circumstances public against her will, even if prosecution was desirable from a public standpoint.²⁰ When, in the consultation process, the Office of the Prosecutor General submitted its comments on the Criminal Law Commissions proposal, a fear of spoiling the marriage was expressed, for example in cases when the violence was thought to be an expression of "sudden anger" and the man and his wife were soon reconciled.²¹ Abused women were thus, in general, supposed to have the same primary goal as the man and the state – to save the marriage through reconciliation with the husband and to avoid state intervention.²²

The discourses on *efficiency* focused primarily on the inability of criminal law to put an end to physical violence in individual cases or to otherwise help women exposed to violence. These functions were instead assigned to laws and authorities in the social sector and formulated as an argument against using criminal law.²³ Criminal justice interventions are sometimes even described as dangerous for the woman, for example in that the man might take revenge on the woman if it was impossible for her to influence the prosecution.²⁴ A similar representation can be found here as in the discourse on the protection of privacy – that criminal legal interventions are a more serious problem for abused women than the violence itself.

In contrast to physical violence, in arguments about unlawful threats the dominant discourses expressed a more positive view regarding the helpfulness of the criminal law for women. It was considered important to give the police more power to back up interventions and there was faith in the ability of a new

18 Burman, M., *Straffrätt och mäns våld mot kvinnor. Om straffrättens förmåga att producera jämställdhet*, Uppsala: IUSTUS 2007, p. 73-74 and 176-177. Cit. 2007a.

19 The criminalization of unlawful threat was extended by the removal of a prerequisite in the 1864 Criminal Code that there had to be an objective danger of the threat being realized.

20 See e.g. Prop. 1962:10, C 134; SOU 1940:20, p. 39 (Inquiry Report); Prop. 1942:4, p. 95.

21 Prop. 1962:10, C 177.

22 Burman, M. 2007a op.cit. p. 237.

23 See e.g. SOU 1953:14, p. 166-167.

24 See e.g. Prop. 1962:10, C177.

prosecution rule to prevent men from repeating threats after an intervention occurred. Further, criminal legal protection for women was found to be necessary and important.²⁵ It seems as if threats, compared to physical violence, were considered a more serious and acute problem, both for women and the state, which needed to be dealt with and the discourse on protection of privacy is almost non-existent in this context.

Discourses on efficiency also quite often included a fear of *ineffective use of criminal investigation resources*. Such discourses were fairly common both in the 1943 prosecution rule reform and in the Penal Code Reform. There was a commonly expressed fear that a lot of meaningless work would have to be done because it was envisaged that the chief prosecutors would very seldom find it in the public interest to prosecute. Repealing the prosecution rule altogether was also described as risking the creation of an overwhelming workload for the police and prosecutors. A widely proposed solution to both these problems was a prosecution rule which would allow the police and the prosecutors to decide quite quickly which cases should and should not be investigated.²⁶

There is an obvious expectation that few cases ought to be investigated and prosecuted. Nevertheless, the standpoint created a need to differentiate between cases regarding a public interest in prosecuting. This is the context of the discourse of *difference* in which the differentiation between various “kinds” of violence was the main subject for discussion. Highly relevant in this discourse, and in accordance with the analysis of Wendt Höjer, was a conception of a boundary line between “brutal” violence, perceived as perpetrated by men with drinking or mental problems, and “natural” violence, less serious violence seen as perpetrated by “normal” men and as a natural part of relationships between men and women.²⁷ It was the first kind of violence that was seen to be in the public interest to prosecute. Another aspect that was quite often accorded importance in the discourse was the victim’s fear of retaliatory measures on the part of the violent man if she reported the crime to the police.²⁸ This corresponds rather well with the above-mentioned difference in discourses on efficiency between assault and unlawful threats. It seems that women’s fear was given more importance in the discourses than their physical integrity.

4 The Reform of the Prosecution Rule

4.1 Legal and Political Context

A more comprehensive public discussion about men’s violence against women started in Sweden at the end of the 1970s, somewhat later than in other western

25 See e.g. Prop. 1943:81, p. 5-9; SOU 1953:14, p. 164; Prop. 1962:10, B 111.

26 See e.g. Prop. 1943:81, p. 7-10 and Prop. 1962:10, C 138-139 and C 151.

27 See e.g. Prop. 1943:81, p. 7-8. See also Wendt Höjer, M. op. Cit. p. 76-78.

28 See e.g. Prop. 1943:81, p. 6. The same kind of boundary line is drawn in inquiries after the penal code reform, e.g. SOU 1976:47, p. 382-383 and in criminal legal scholarship, e.g. Jareborg, N., Zila, J., *Straffrättens påföljdslära*, Stockholm: Norstedts Juridik 2007, p. 24.

countries, such as the United States.²⁹ During the 1980s men's violence against women was established in the public political arena, mainly in social and criminal policy.³⁰ The main issue in the social policy field was economic support for women's shelters, but also help and support to women exposed to violence. In criminal policy men's violence against women in intimate relationships was the subject of discussion in a reform of the prosecution rule for assault in 1982.³¹ This reform is considered to have great symbolic value as a turning-point in the social view of victims of crime.³² Men's violence against women also became a central issue in several crime-victim reforms during the 1980s, when laws aiming to provide support, help and protection for the victims of crime were enacted.³³

After the 1982 reform, a complaint from the victim or the notion that it is in the public interest are no longer required for a prosecution. Four main arguments were put forward in favor of the reform.³⁴ Firstly – there was no longer a need to respect the privacy of marriage, especially since the introduction of free divorce and the strong concept of husband and wife as two independent individuals, which had developed in gender equality politics and family law. Secondly – it was considered important to state firmly that violence against women in the home carries a penal value equal to assaults in other contexts. Thirdly – that a changed prosecution rule would contribute to enhancing the possibilities for women to protect themselves from repeated violence. And finally – that the reform would in the long run contribute to reducing the prevalence of violence against women in intimate relationships.

The definition of the problem of men's violence against women in intimate relationships changed in several ways during the 1970s and 1980s.³⁵ When discussed in a social policy context, the violence was defined as a social problem and became an issue of care and social provisions, with a starting-point in the "problematic" family. In a criminal policy context, on the other hand, the violence was seen as an issue of an equal right for all individuals to immunity from assault. This liberal framing of the violence made possible several of the

29 Eduards, M., *Förbjuden handling. Om kvinnors organisering och feministisk teori*, Malmö: Liber 2002 and Elman, R.A., *Sexual Subordination and State Intervention. Comparing Sweden and the United States*. Oxford: Berghahn Books, Providence 1996.

30 For descriptions and analysis of the public and political discussion during the 1970s and 1980s See e.g. Eduards, M. op.cit.; Lindvert, J., *Feminism som politik*, Umeå: Boréa 2002; Wendt Höjer, M. op.cit.

31 Men's violence against women in intimate relationships was also briefly mentioned in a reform in 1988 when the prerequisites for aggravated assault were altered, Prop. 1987/88:16.

32 Åkerström, M., Sahlin, I., *Inledning*, in Åkerström, M. et.al (eds.), 'Det motspänstiga offret', Lund: Studentlitteratur 2001, p. 20.

33 Examples of such laws are the Restraining Orders Act (1988:699) and the Injured Party Counsel Act (1988:609). For the development and political discussion of crime victim laws See Persson, Å., *De politiska partiernas rättspolitik*, Uppsala: IUSTUS 2004.

34 Ds Ju 1981:8 (Ministry Memorandum), Prop. 1981/82:43 and JuU 1981/82:18 (Report from the Parliamentary Standing Committee on Justice).

35 For this section, See Wendt Höjer, M. op.cit. p. 89-119.

reforms during the 1980s in that special rules previously surrounding violence against women, while subordinating them, could be abolished. At the same time, however, in order to implement measures against the violence, the problem had to be defined as “general” or “universally human”. Measures to protect women only lacked legitimacy in the liberal schema and gender relations were largely defined in terms of love and care, not as involving “political” issues of justice.

4.2 Discourses

The discourse picture is more complex in the texts from the 1982 prosecution reform. The views expressed are also more ambivalent and differ quite extensively amongst the actors in the legislative process. The same discourses as in the previous reform are still present in the texts, but changes in content and significance can be observed. New discourses *promoting the use* of criminal law appear. Firstly, there are discourses on *likeness* which “neutralize” the dominant discourse of protection of privacy in the penal code reform. Secondly, discourses on *efficiency* represent criminal law as effective.

There are two discourses on *likeness* in the texts. In the first, violence in the home was represented as carrying a *penal value equal* to assaults in other contexts. A significant difference can be observed amongst the actors in the process. Discourses on equal penal value are very common in the government bill and in the report from the Parliamentary Standing Committee on Justice, while they seldom appear in the report from the inquiry or in the reports from bodies involved in the consultation process, especially those provided by the police and the prosecutors.

The other discourse, on *likeness*, characterized women in heterosexual relationships as *the same kind of independent individuals* as any other person. This discourse is especially strong in the report from the inquiry.³⁶ In this discourse, marriage is comprehended as a voluntary agreement between two independent individuals and women are no longer supposed to continue their relationships with violent men. The attitude towards divorce is also fundamentally different compared to that in the previous reform. It is now described as an institution that should not be regarded as in any way negative for women.

New discourses on *efficiency* focused on the *norm-constituting and educational effects* of criminal law. Using criminal law in order to constitute a norm for equal penal value was described as both possible and necessary. This was without doubt the main argument in favour of the reform and was expressed by a vast majority of the actors in the legislative process.³⁷ A new argument appeared in this discourse, pointing to the consequences of not using criminal law, namely that the prosecution rule gave the impression that men’s violence against women in the family was not a “real” crime or was condoned by the

36 See e.g. Ds Ju 1981:8, p. 48-50.

37 See e.g. Ds Ju 1981:8, p. 52 and 56; Prop. 1981/82:43, p. 15-24 and p. 11; JuU 1981/82: 18, p. 2.

state.³⁸ The arguments also involved a faith in the ability of the reform to influence attitudes and thus function as a general preventative measure. Protection from violence for *all* women in the future was described as the central issue, in contrast with the Penal Code Reform in which the main issue was the ability of the criminal law to stop violence in individual cases and support women already exposed to violence. While different treatment was seen as “natural” in the Penal Code Reform, equal treatment and non-discrimination were formulated as the main method in the prosecution rule reform.

A stronger belief in the ability of criminal law to be of help to women already exposed to violence was also expressed. Interventions by the criminal justice system were considered to be positive for abused women. For example: that abolishing the prosecution rule would create better possibilities for women to obtain protection, that a full investigation by the police showing the situation for women would enhance their possibilities of getting help from other authorities and that a prosecution rule without restrictions would in itself be a psychological support for abused women.³⁹

At the same time, however, discourses on *efficiency* and *difference*, promoting *limited use* of criminal law, remained rather strong. This was especially the case in the opinions from the police and prosecution authorities in their reports from the consultation process. But as opposed to emphasizing the inability of criminal law to stop the violence and help the individual woman, they point instead to *low traditional efficiency* (low prosecution rates and few convictions) and *inefficient use of resources*.⁴⁰ In these discourses a duty to investigate and prosecute was connected with problems with evidence related to women’s anticipated unwillingness to provide statements about the violence and to the expectation that a majority of the cases will be of low penal value.⁴¹

In several opinions from police and prosecution authorities, a new question was raised, namely – should the prosecution rule be abolished – a need to widen the possibilities according to procedural law to waive prosecution in order to create “necessary flexibility”.⁴² This shift from prosecution rules in criminal law to waiver of prosecution in procedural law expressed a wish to maintain the status quo and discourses on *difference* were common in such argumentations. Waiver of prosecution was described as the normal and best solution in cases of petty crime which were considered to be one-time-only episodes of violence, and situations when social interests related to the victim were considered to indicate that there should be no prosecution. Two types of cases were described as needing prosecution: repeated and systematic assaults and less severe cases where the violent man had threatened the woman into silence.

38 Dir. 1979:146, p. 4 (Government directives to the Inquiry); Ds Ju 1981:8, p. 46-47; Prop. 1981/82:43, p. 16, 21 and 28.

39 See e.g. Ds Ju 1981:8, p. 50; Prop. 1982/82:43, p. 15-25; JuU 1981/82:18, p. 2.

40 See e.g. Ds Ju 1981:8, p. 51 and Prop. 1981/82:43, p. 17-22.

41 Prop. 1981/82:43, p. 21-24.

42 Prop. 1981/82:43, p. 17-24. Waiver of prosecution is regulated in the Code of Judicial Procedure, Chapter 20, section 7-7b.

Discourses on *the victim's will* to avoid prosecution were still common, but women's unwillingness was no longer presumed to be related to a wish to be reconciled with the husband and to preserve the marriage. Sweeping references in the texts to "the social interests of abused women" are common, with no explicit details about what was considered to be the rationale behind women's unwillingness. Nevertheless, there seems to be a common expectation that abused women want to protect violent men from criminal justice interventions and punishment. Discourses on the will of the victims are common in argumentations concerning two different issues. Firstly, in a context of inflexible prosecution rules her unwillingness was considered to create problems for the criminal justice system, with low traditional efficiency and inefficient use of investigation resources as natural consequences. Secondly, even though the starting-point seems to have been that women's opinions should in principal be accepted because of the strong notion of women as independent individuals with a competence to make their own decisions, the need to constitute a norm for equal penal value made it difficult to take abused women's presumed wishes into account. This tension was solved by "relieving" women from having to have and to express an opinion. Abused women are, for example, expected to be under such strong pressure from their male partners that they cannot be expected to make a rational and deliberate decision on the issue of prosecution.⁴³

5 The Women's Peace Reform

5.1 *Legal and Political Context*

Men's violence against women was occasionally mentioned within the context of gender equality during the 1980s⁴⁴, but a more distinct articulation of such violence as a specific issue of gender equality developed during the 1990s. One aspect of men's violence against women, as related to gender and power, was introduced in Sweden in 1994 in a government bill concerning gender equality. Men's violence against women was described as one of the most serious shortcomings relating to the achievement of gender equality. Violence against women was seen as being closely connected to power relations between men and women in society and as an expression of a view of women that was incompatible with the goal of gender equality.⁴⁵

At the same time the Government appointed an official commission, the Commission on Violence against Women, with directive to review several areas of law concerning men's violence against women from the perspective of women. The Commission was also to analyze criminal law against the backdrop of how men's violence against women was comprehended and conceptualized in

43 See e.g. Ds Ju 1981:8, p. 48 and JuU 1981/82:18, p. 2.

44 Lindvert, J. op.cit. p. 196; Eduards, M., *Against the Rules of the Game*, in Eduards, M. et.al. 'Rethinking Change. Current Swedish Feminist Research. Uppsala: Humanistisk-samhällsvetenskapliga forskningsrådet 1992, p. 83-104; Wendt Höjer, M. op.cit. p. 117-119 and 148-153. See also the first government bill on gender equality, Prop. 1987/88:105.

45 Prop. 1993/94:147.

gender equality politics.⁴⁶ Several proposals were presented by the Commission in 1995. The Commission interpreted a “women’s perspective” as being the reality and experiences of women exposed to violence, or more precisely, the violence and its effects as perceived by abused women and revealed in feminist research on violence against women. Considering measures that could serve the interests of women was, therefore, formulated by the Commission as its main mission.⁴⁷

The Government Bill “Women’s Peace” in 1997 was a comprehensive and gender-sensitive reform comprising several legislative and policy measures, largely building on the proposals of the Commission.⁴⁸ Three cornerstones were presented in the effort to combat men’s violence against women; new and amended legislation, preventive measures directed against violent men and respectful and suitable treatment of women exposed to violence on the part of all authorities.⁴⁹ A new crime - “gross violation of a woman’s integrity” – was enacted, buying sex from a prostitute became a criminal offence, an amendment was passed to broaden the definition of rape and a definition of sexual harassment was added to the Act on Equality between Men and Women, together with provisions aimed at improving protection from sexual harassment.⁵⁰

The Women’s Peace Reform constituted a turning-point in Sweden. Criminal law became an instrument for promoting gender equality, while gender equality was simultaneously formulated as a relevant aspect of criminal policy.⁵¹ In addition, men’s violence against women was for the first time defined as an issue of women’s human rights, clearly connected to the development in the United Nations context. Since the beginning of the 1990s, men’s violence against women has been seen in the UN as a violation of women’s human rights.⁵² Additionally, similarly to the formulation in Swedish gender equality politics, the UN takes its starting point in a perspective on violence against women as *“a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”*⁵³

46 Dir. 1993:88.

47 SOU 1995:60, p. 51-52.

48 Prop. 1997/98:55.

49 Prop. 1997/98:55, p. 23-24.

50 The definition of sexual harassment has since been changed in that the law today makes a distinction between sexual harassment and harassment based on gender. From January 1st 2009 these provisions are found in the new Discrimination Act (SFS 2008:567).

51 Burman, M. 2009 op.cit.

52 For example, during the World Conference on Human Rights in Vienna in 1993, the governments unanimously expressed the view that violence against women is a violation of women’s human rights. A/Conf.157/23 Vienna Declaration and Programme of Action, Part I, Art. 18(2) in the Vienna Programme.

53 A/Res/48/104, Declaration on the Elimination of Violence against Women.

So the aim of the Women's Peace Reform was to ensure that the Swedish state met its responsibilities in respect of women's human rights and to develop more effective and gender-sensitive policies in the field of gender-based violence. Enhancing criminal legal protection for women against gender-related violence and promoting gender equality were specified as the main purposes of the reform.⁵⁴

The perspective of women exposed to violence was described as invisible or suppressed in criminal law. The purpose behind the creation of the crime "gross violation of a woman's integrity" was consequently to construct a crime that better accorded with the reality of violence in intimate relationships as experienced by women. A process of normalizing the violence, in which abused women "learns" to live with and accept the violence, power and domination as a normal situation, was described as the knowledge base about the violence.⁵⁵ The aim of the new crime was to get to grips with the process-like nature of men's repeated violence against their female partners or ex-partners and the multiple effects of various acts and to ensure that repeated violence in intimate relationships carries a more adequate penal value. The actual definition of the crime is sex-neutral, but in the second paragraph there is a sex-specific formulation exemplifying the special harm violence against a woman in a heterosexual relationship is considered to represent. The crime is defined in the Penal Code Chapter 4 section 4a.⁵⁶

A person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or have had, a close relationship to the perpetrator, shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, be sentenced for *gross violation of integrity* to imprisonment for at least six months and at most six years.

If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under circumstances comparable to marriage, he shall be sentenced for *gross violation of a woman's integrity* to the same punishment.

The new crime covers less serious acts that have already been criminalized, for example non-aggravated assault, unlawful threats and unlawful coercion. Such acts can be judged together and given a higher penal value, compared to the situation before the new law was enacted, if the specific prerequisites of repeated violation of the woman's integrity suited to severely damage her self-confidence are met. It is not a continuous crime. Every act is a single criminalized act, but specifications of the place and date of each individual act are not necessary. Acts during a certain period of time can be accepted as the basis for punishment, even

54 Prop. 1997/98:55, p. 20-23.

55 See e.g. SOU 1995:60 p. 103 and 143; Prop. 1997/98:55, p. 75-79.

56 Official translation in Ds 1999:39. In the first Supreme Court Case (NJA 1999 s. 102) the majority of judges interpreted the new crime in such a way that the crime could not comprise the kind of cases that had been the purpose. The case led to a change in the law in order to make it applicable in the manner intended (Law SFS 1999:845; Prop. 1998/99:145).

though the time and place for the acts and how the acts were carried out is to some extent unspecified.⁵⁷

This construction still excludes several forms of male use of psychological violence to gain power and control over women. Some of the feminist critiques of criminal law were, however, acknowledged both in respect of recognizing a male norm in criminal law on a general level and in how violence is criminalized on a detailed level.⁵⁸ The new crime can be seen as radical in a criminal legal context because of its focus on the process and the consequences of repeated violence, instead of on single and isolated acts. The construction of the crime has also opened up new possibilities for taking the use of psychological violence into consideration. The Supreme Court has stated that the prerequisite of being “suited to severely damage the woman’s self-confidence” is to be judged by considering the whole situation for the woman, making it possible to consider, for example, the man’s efforts to control, isolate and insult the woman.⁵⁹ The psychological character of violence is also more explicit in case law than it was before. Psychological violence or the psychological consequences of physical violence is thus implemented as a relevant aspect in criminal law in a way it has not been before. This ought to mean, for example, that psychological violence is a relevant factor in judging the penal value of repeated violence.⁶⁰

5.2 Discourses

During the Women’s Peace Reform views on the use of criminal law also differed, but the discourse picture is very changeable. New ways of speaking about the violence are present in the texts and the issues discussed are very different compared with previous reforms. Discourses commonly found in texts from previous reforms are non-existent, less prevalent or are altered in a crucial way. Three new discourses dominate the texts: *suitability*, *penal value* and *crime construction*. New discourses on *efficiency*, introducing new ways of treating the issue of traditional efficiency, are also rather strong.

The discourse on *suitability* dealt with how criminal law relates to the processes and outcomes of men’s repeated physical and psychological violence against women in intimate relationships. In this discourse various judgements are made about the capacity of criminal law to deal with the violence in an “appropriate” way. A notable shift from previous reforms is a more critical

57 The Supreme Court has elaborated this aspect in NJA 2004 s.437. It Seems to be the opinion of the Supreme Court that a prerequisite for accepting a series of unspecified acts is that some more detailed and specified acts can also be established. See also NJA 1991 s. 83 and NJA 1992 s. 446.

58 For feminist critiques of criminal law on different levels See e.g. Edwards, S.S.M., *Sex and Gender in the Legal Process*, London: Blackstone Press Limited 1996; Lacey, N., *Unspeakable Subjects. Feminist essays in legal and social theory*, Oxford: Hart Publishing 1998; Lacey, N., *Violence, Ethics and Law: Feminist Reflections on a Familiar Dilemma*, in James, S. et.al. (eds.), ‘Visible Women. Essays on Feminist Legal Theory and Political Philosophy’, Oxford: Hart Publishing 2002, p. 117-135; Nicolson, D. et.al (eds.), *Feminist Perspectives on Criminal Law*, London: Cavendish Publishing 2004.

59 Supreme court case NJA 2003 s. 144.

60 Burman, M. 2007a op.cit. p. 194-196 and 391-392.

approach towards criminal law, and for the first time the values guiding the reform and the critical analysis are made explicit. In previous reforms, the values and starting points for the analysis are described as given, neutral and objective.⁶¹

The critical approach is most obviously present and explicit in the directives to the inquiry and in the report from the Commission on Violence against women, whilst varying a lot in the other texts. The Commission's assignment is formulated as evaluating whether the prerequisites for crimes are adequately constructed against the back-drop of values expressed by the state concerning gender equality in general and in relation to violence against women in particular.⁶² The Commission defined three basic shortcomings of criminal law in that it constituted a hindrance to taking the whole situation for women exposed to violence in intimate relationships into consideration. Firstly, the focus in criminal law on individual and separate acts was seen as fragmenting the general picture of the violence. Secondly, the demand that every criminal act must be defined exactly with regard to time and place is described as problematic, because it is not the separate acts that characterize the situation for abused women, but a process and an ongoing reality marked by violence and threats, making it very difficult for abused women to describe every criminal act in a detailed way. And thirdly, that women exposed to violence are often also exposed to acts of psychological character that are not criminalized but are important in that, as such and in the context of ongoing criminalized violence, they shape the situation into one of psychological terror.⁶³

The discourse on suitability is rather unusual in the opinions from the consultation process, especially in those from bodies within the criminal justice system. But when this issue is touched upon, a common conclusion is that current criminal law is sufficient for dealing with the violence. Arguments for such a conclusion are not presented and the issue is thus treated as if such a conclusion does not need explanation or justification.⁶⁴ The need to take the whole situation for abused women into consideration is acknowledged in the government bill and the report from the Parliamentary Standing Committee on Justice, but the critical tone is rather subdued. Instead it is claimed that criminal law already admits such considerations, for example the possibility of regarding repeated and systematic assaults as aggravated assault and possibilities offered by case law of not having to individualize and more exactly define each single criminal act.⁶⁵ Therefore, it is concluded, what is missing in criminal law is the possibility to take the whole situation for abused women into consideration when

61 Compare Wendt Höjer, M. *op.cit.* p. 160.

62 Dir. 1993:88, p. 466.

63 SOU 1995:60, p. 301-302.

64 See *e.g.* the opinions of the Office of the Prosecutor General and the Appeal Court of Svea, Ds 1996:28, p. 258 and 254.

65 Prop. 1997/98:55, p. 76-77 and 1997/98:JuU13, p. 16. The Supreme Court cases are NJA 1991 s. 83 and NJA 1992 s. 446.

the repeated criminal acts are less serious, for example assaults that are considered petty crimes, unlawful threats and molestation.⁶⁶

In discourses on *penal value* the arguments are used in two different ways to justify the need for the crime “gross violation of a woman’s integrity”. The low penal value accorded in current criminal law is described as the main problem in the government bill and in the report from the Parliamentary Standing Committee on Justice. Criminalizing men’s violence against women in intimate relationships in this new way and giving it a higher penal value is motivated with reference to a need to accentuate the societal view of this form of violence, i.e. that it is unacceptable and serious.⁶⁷

The discourse on penal value in the report from the Commission on Violence against Women is quite different. The violence is described as “psychological terror”, is seen as constituting very grave violations of integrity and is viewed as a manifestation of a certain kind of brutality.⁶⁸ Altogether, according to the Commission, this is motivation for giving the new crime a high penal value. The main argument for the new crime in the report from the Commission is not – as in the government bill – a need to “level up” the penal value, but a need to reconstruct the provisions in order to describe a criminal act in better accordance with the processes and outcomes of violence against women; a criminal act which according to the Commission has a high penal value.

These discursive differences are partly due to a difference between the proposed crime in the Commissions’ report and the final construction of the crime. The Commission proposed that some aspects of what they described as “psychological terror” should be criminalized, but such an extended criminalization was rejected in the Government Bill and only already criminalized acts were included in the new crime. The proposal from the Commission also included a higher minimum of punishment (one year imprisonment) compared to the final outcome (six months imprisonment).⁶⁹ One difference in the discourses remains, however, which in my view shows that the Commission and the Government had two rather different starting points when giving their views on the need for the new crime and motivating its penal value.

Discourses on *crime-construction* focus on how a crime “can” or “must” be legally defined in law. Restrictions based on legality were a central aspect in such discourses and are mainly found in arguments resisting the proposed new crime and the discussions behind it. A fear was expressed that the suspect would meet difficulties in defending himself if the demands for individualization and exact definitions of single criminal acts were weakened.⁷⁰ Another common argument was the presumed problems that would arise with the adjudication of

66 Prop. 1997/98:55, p. 77.

67 Prop. 1997/98:55, p.23 and p. 76-78; 1997/98:JuU13, p. 16.

68 SOU 1995:60, p. 300-307.

69 The processes and outcome of the enactment and legislative process of the new crime are described and analyzed in Nordborg, G., Niemi-Kiesiläinen, J., *Women’s Peace: A Criminal Law Reform in Sweden*, in Nousiainen, K. et.al (eds.), ‘Responsible Selves. Women in the Nordic Legal Culture’, Aldershot: Ashgate 2001, p. 353-373.

70 See e.g. Ds 1996:28, p. 256 and 258.

the new provision because it would not be possible to handle it according to customary criminal legal systematics, concepts and evidentiary methods.⁷¹ The proposed crime was also described as a “significant innovation”, in need of being adjusted to the customary criminal and procedural frame-work.⁷²

Discourses on crime-construction were especially common in critical argumentations resisting the extended criminalization of psychological violence, as proposed by the Commission. Psychological violence in general has been discussed in a criminal legal context since the beginning of the 1990s. The proposal from the Commission was the first, and is still the only, concrete attempt to extend the criminalization of psychological violence.⁷³ The criminal act was, in the Commissions’ proposal, defined as one which “subjects her to other psychological influence, which seriously violates her integrity and has the quality of seriously damaging her self-respect”.⁷⁴ Examples given of such psychological violence were controlling behaviours, efforts to isolate the woman by forbidding her to meet friends or relatives or hiding the phone, talking to the woman in a humiliating way and using diffuse threats. The objections in the discourses concerned legality, that the legal text was too vaguely formulated and that criminal liability was impossible to reasonably foresee.⁷⁵

Discourses on *efficiency* are much more unusual in comparison with previous reforms. The most significant discourse on efficiency concerned *traditional efficiency*. Discourses on poor traditional efficiency because of special difficulties in investigating and prosecuting such cases are still present, but other discourses dominate. The starting point itself, that the difficulties mentioned are inevitable and inherent attributes of the violence and therefore an argument for not using criminal law, is challenged. Poor efficiency is analyzed as an issue related to *knowledge about and attitudes to men’s violence against women* and *greater traditional efficiency* is described for the first time as something positive and important. Police officers, prosecutors and judges are considered to be in need of further education about the processes and outcomes of men’s violence against women in intimate relationships and it is considered important to develop better working methods.⁷⁶ Bodies from the criminal justice system giving opinions in the consultation process did not explicitly respond to the critique directed towards them. Discourses on poor traditional efficiency were instead still rather common in their opinions⁷⁷.

71 See e.g. Ds 1996:28, p. 246, 253, 265 and Prop. 1997/98:55, p. 77-79. A rather common proposal in the opinions from the consultation process was – instead of the proposed new crime – to adjust the prerequisites for aggravated forms of relevant crimes, with the argument that it would be a sufficient measure to deal with the problems pointed out and would at the same time avoid the presumed problems with the proposed crime.

72 Prop. 1997/98:55, p. 206.

73 Burman, M. op.cit. p. 277-278.

74 Translation in Nordborg, G et.al op.cit. p. 360.

75 See e.g. Ds 1996:28, p. 260-273 and Prop. 1997/98:55, p. 78.

76 SOU 1995:60, p. 206-213; Prop. 1997/98:55, p. 47-58; 1997/98:JuU13, p. 42-49.

77 Ds 1996:28, p. 253-274.

Discourses on *norm-constituting and educational effects* are also rather significant in the texts. Making the violence visible and emphasising that the violence is unacceptable and morally wrong was presented as a method for increasing the norm-constituting effect.⁷⁸ In contrast to the reform of the prosecution rule, the recipients of this message were not only the citizens but also the criminal justice system. The effort to implement a special view of men's violence against women can be understood as trying to challenge an existing male norm in criminal law and to bring about changes in the practices of the criminal justice system.

6 Constructions and Changes

The main discourses in the texts promoting *limited use* of criminal law construct the violence as *being beyond the scope of criminal law*. The “problematic nature” and “inherent characteristics” of the violence are used to explain why criminal law or criminal legal interventions are unsuitable or impossible or why current possibilities for using criminal law are sufficient. When criminal law and the criminal justice system are not analyzed from a critical perspective, the outcome is given – the critical eye looks only at the violence and the problems that occur are considered to be related to the violence itself and those involved, especially women exposed to violence.

Discourses *promoting the use* of criminal law function in different ways. Most of them do not contribute to the construction of the violence because they focus on criminal law instead of on the “nature” of the violence. Such discourses, especially those on the norm-constituting, educational effects and suitability, represent a shift in perspective, meaning that criminal law is analyzed in relation to the violence and not vice versa.

My analysis is that discourses *promoting the use* of criminal law only produce one construction of the violence, a construction of the violence as *having a penal value*. These discourses construct the violence as having either the same penal value as any other type of violence, as in the prosecution rule reform, or a different penal value, as in the Women's Peace Reform (and to some extent also in the Penal Code Reform). There is, however, one important difference. In the prosecution rule reform the arguments about penal value were mainly based on *who* the subject of violence was and her likeness to other victims; not so surprising perhaps considering the dominant arguments in previous reforms. But in the Women's Peace Reform, the arguments in the first place – most notably in the report from the Commission on Violence against Women - focused on *the violence and its context*, not on who the victim is. The crime of gross violation of a woman's integrity is in my view not the manifestation of a view that women have a higher “value” as victims or that it is more important to protect them than men, but is a way of trying to implement difference related to gender in criminal law.

78 See e.g. SOU 1995:60, p. 289; Ds 1996:28, p. 22; Prop. 1997/98:55, p. 23 and 83.

Some discourses *promoting the use* of criminal law challenge the construction of men's violence against women in intimate relationships as "problematic". That is most notable regarding discourses on efficiency. My analysis shows the importance of what demands or expectations are made on criminal law. Demands or expectations on criminal law and criminal justice interventions to stop violence in individual cases and help individual women to solve a situation that is chaotic from emotional, practical, legal and health perspectives, run an obvious risk of leading to huge disappointment. Such discourses have nevertheless been important, because they challenge a strong notion in older reforms that criminal justice interventions are a bigger problem for women than the violence itself. Other discourses on efficiency take their starting point instead in the normative and moral functions of criminal law and rely on the ability of criminal law to change attitudes or morals and thus function as general prevention. With such an expectation of criminal law it seems easier to present a positive view of its efficiency.

Promoting the use of criminal law in these ways can, however, meet difficulties. There is a tension between how the use of criminal law has been motivated in the prosecution rule and Women's Peace Reforms and how mainstream criminal legal scholarship in Sweden argues about use of criminal law. Demands for a criminal law that is more responsive to men's violence against women emphasize general prevention (especially the norm-constitutive part), positive legal rights and positive criteria for using criminal law. Such demands are confronted by a neoclassical and defensive discourse in which the general and special preventive effects of criminalization are strongly questioned and legality and negative rights are emphasized. Feminist demands risk being associated with arguments that are considered irrelevant, of subordinate importance or even a threat to the basic principles of criminal law and basic conceptions of the purpose, legitimacy and boundaries of criminal law.⁷⁹ Feminist demands for criminal legal reform have sometimes been forced into a rather uncomfortable choice between prevention and legality.⁸⁰

The construction of violence has also changed in another respect. Discourses in the legislative processes, especially those on *difference*, construct men's violence against women in heterosexual relationships in two different kinds of violence by using dichotomies. After long making a major division of the violence into "grave" and "not grave", a significant discursive change has occurred. Today the main division is made between "repeated" and "unrepeated" violence and the seriousness of the violence is mainly related to how often it occurs and its context, not to how grave a single and isolated act of violence is considered to be. The connection between "not grave" and "not repeated" has been contested, making it possible to regard "repeated but not grave" violence as serious violence.

79 Burman, M., *Beyond Constructed Boundaries in Criminal Law Discourse*. In Gunnarsson et.al. (eds.), 'Exploiting the Limits of Law. Swedish Feminism and the Challenge to Pessimism'. Aldershot: Ashgate 2007.

80 Nousiainen, K., *Equalizing Images? Gendered Imaginary in Criminal Law*. In *Antropologi i Finland*. Journal of the Finnish Anthropological Society, 24, p. 16.

As already pointed out, a significant shift has taken place, in that criminal law is also analyzed from a critical perspective in relation to the violence and not only vice versa. Discourses on the norm-constituting educational effects and on suitability represent a critical position in which issues such as the consequences of not using criminal law are allowed to be discussed, as well as what kind of norms and values (gendered, ethnic, sexual and so forth) are imbedded or represented in criminal law and the criminal justice system. There has also been a shift in relation to knowledge. The importance is acknowledged of taking knowledge from “the outside” into consideration. Values, notions and experiences developed “inside” criminal law and the criminal justice system are no longer regarded as the only relevant body of knowledge and a more complex picture of the violence is presented. Talking about the violence starting from knowledge about the violence and not from the discourse of criminal law has opened up the latter to new questions, possibilities and difficulties.

This development has continued. Similar approaches to knowledge and criminal law are taken in a report from an inquiry into stalking.⁸¹ Criminal law continues, at least sometimes, to be placed under scrutiny, without taking values, notions and experiences constructed within the criminal legal discourse for granted and as the inevitable starting points. The view that greater traditional efficiency is something to strive for is also still often expressed in a context of connections made between traditional efficiency and knowledge about and attitudes to men’s violence against women. Two rather recent examples are the government’s action plan to combat men’s violence against women, violence and oppression in the name of honor and violence in same-sex relations and a growing interest in analyzing differences in attrition rates between police authorities.⁸²

It is time to conclude. My main point is that discursive changes have opened the way for more reflective and reconstructive legislative processes concerning men’s violence against women in heterosexual relationships. Three aspects that have previously been difficult to articulate can now be included in discussions about using or not using criminal law. Firstly, there is room for discussions about the *consequences of not using* criminal law. Secondly, it is possible to take a more *critical position* than before regarding discourses and constructions in criminal law. Knowledge from other fields, such as research on violence, is taken more seriously and can be used in order to examine criminal law. And thirdly, *values and attitudes related to gender* in criminal law and in the treatment of violence in the criminal justice system are to some extent acknowledged and can be subjected to scrutiny. The next obvious question is then, of course, *how* criminal law should or could be used in detail. The massive critique of the proposed new crime shows that finding an acceptable way to implement differences related to gender in criminal law in a context of legality is far from evident. My belief is that this question also would benefit from a

81 SOU 2008:81.

82 Skr. 2007/08:39 and The Swedish National Council of Crime Prevention, *Polisens utredningar av våld mot kvinnor i nära relationer*, Rapport 2008:25.

criminal legal discourse that allows critical, open, reflective, inclusive and reconstructive approaches and discussions.

Finally, I believe it is time to have a serious discussion about *why* we use criminal law when it comes to men's violence against women in intimate relationships. Several discourses tend to focus heavily on women exposed to violence and get caught up in such questions as "Why does she not leave the man?"; "Why does she not cooperate with the criminal justice system?" or "Why should we bother if she does not want to see the man punished?" It is important that these questions are, of course, discussed and dealt with when it comes to working methods and how to treat abused women in the criminal justice system. But it is harder for me to see their relevance when it comes to whether or not we should use criminal law. Is there not a risk, if we pay too much attention to these aspects, that the main issue will slip out of focus, namely that as violent men's behavior is a crime to what extent should the state have an obligation to react?